IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5124 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARISH VALJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5124 of 2004

MR MIHIR JOSHI with MR VIMAL M PATEL for Petitioner No. 1

MR SIRAJ GORI, AGP for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 29/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Rule. Mr Siraj Gori, learned AGP waives service of Rule for the respondents.

With the consent of the learned counsel for the

parties, the petition is taken up for final disposal today.

2. What is challenged in this petition under Article 226 of the Constitution is two separate orders dated 13.4.2004 (Annexures "D" and "E") passed by the Assistant Sales-tax Commissioner, Circle 25, Gandhidham, Kutch under Sections 48A and 73 of the Gujarat Sales-tax Act, 1969 ("the Act" for short) attaching the petitioner's goods being teak logs valued at Rs.18 lakhs. The attachment orders were passed on the ground that the petitioner purchased the said goods from M/s Patidar Saw Mill which party had in turn purchased the same from M/s Vineet Enterprises which was the original importer. M/s Vineet Enterprises was indulging in evasion of sales-tax on large scale and, therefore, the respondent authorities had initiated certain actions against the said party. The respondent authorities had also attached the bank account of M/s Vineet Enterprises. It is the case of the respondent authorities that M/s Patidar Saw Mill was merely an intermediary to see that the goods are handed over to the petitioner with a view to getting undue advantage of the situation and to save M/s Vineet Enterprises from its goods being followed by the sales-tax authorities.

3. Mr Mihir Joshi, learned counsel for the petitioner submits that the respondents have erroneously invoked the provisions of the main part of Section 73 of the Act without considering the proviso thereto which lays down that any transfer or charge shall not be void if made for valuable consideration and without notice of any proceeding under the Act. M/s Patidar Saw Mill had purchased the goods in question being teak logs from M/s Imperial Trade and Commerce Ltd., London by high seas sale agreement executed between the parties on 11.3.2004. Reference is also made to the amendment letter dated 7.4.2004 by which the Import General Manifest (IGM) was requested to be amended by Merchant Shipping Services Pvt. Ltd. from M/s Vineet Enterprises to M/s Patidar Saw Mill and M/s Imperial Trade and Commerce Ltd. had also issued packing list with invoice dated 16.2.2004 consigning the goods in question in favour of M/s Patidar Saw Mill. The petitioner purchased the goods in question from M/s Patidar Saw Mill on 7.4.2004 by paying the purchase price by demand drafts of Rs.16,41,301/- and the petitioner also paid necessary customs duty of Rs.1,10,492/- on 13.4.2004. The petitioner accordingly filed the requisite Bills of Entry and cleared the goods to its own premises after getting the consignment insured with New India Assurance Co. Ltd. It is submitted that

the petitioner has paid the purchase price directly to M/s Patidar Saw Mill and not to M/s Vineet Enterprises.

4. Having heard Mr Joshi, learned counsel for the petitioner and Mr Siraj Gori, learned AGP for the respondent authorities, in the facts and circumstances of the case, we are of the view that in any case the petitioner has made out the case for invoking the proviso to Section 73 of the Gujarat Sales-tax Act, 1969 as the petitioner had purchased the goods in question for valuable consideration and there is no material on record to show that the petitioner was party to any fraud allegedly played by M/s Vineet Enterprises, nor is there any material to infer that the petitioner had any notice of any proceedings against M/s Vineet Enterprises.

5. In view of the above discussion, the impugned orders dated 13.4.2004 at Annexure "D" and "E" and the subsequent consequential communication dated 17.4.2004 at Annexure "H" are held to be illegal and are, therefore, quashed and set aside.

We may also note at this stage that on 10.5.2004 the Assistant Sales-tax Commissioner, Gandhidham has cancelled the aforesaid orders dated 13.4.2004 on the basis of our interim order dated 7.5.2004, however, still expecting the petitioner to continue to maintain a stock of woods worth Rs.18 lakhs in the petitioner's premises.

Since we have already quashed and set aside the orders dated dated 13.4.2004 at Annexure "D" and "E", there is no question of the petitioner being required to maintain any stock as per the order dated 7.5.2005 which was an interim order during pendency of the petition.

6. The petition is accordingly allowed in the aforesaid terms.
Rule is made absolute with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)
sundar/-